

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

VIRGINIA BLAND,)	
)	
Appellant,)	
)	OSPI 205-92
vs .)	
)	
BOARD OF TRUSTEES, SCHOOL)	<u>DECISION AND ORDER</u>
DISTRICT NO. 4, LIBBY,)	
)	
Respondents.)	

* * * * *

PROCEDURAL HISTORY AND FACTS OF THIS APPEAL

Virginia Bland is appealing the April 20, 1992, decision of the Lincoln County Superintendent of Schools, Mary Hudspeth. Acting on the motion of the Lincoln County School District No. 4 Trustees ["the Trustees"]. The County Superintendent dismissed Ms. Bland's appeal of the denial of a transfer to a different teaching position.

Ms. Bland is a tenured teacher at the Libby Middle School who has taught in District No. 4 since 1973. The Libby Education Association/Montana Education Association ["LEA/MEA"] is her bargaining unit. The LEA/MEA and the Trustees negotiated a collective bargaining agreement [hereinafter "the CBA"] for July 1, 1990 through July 1 1992.

In the spring of 1991 the Trustees advertised a math Leaching position in the Libby High School. Ms. Bland applied out was not hired. Rather than transferring her, the

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1 Superintendent of District No. 4 hired a teacher with two years
2 experience teaching sixth grade math in California. Ms. Bland
3 appealed the Superintendent's decision to the Trustees and then
4 to the County Superintendent.

5 On January 13, 1992, the Trustees filed their motion to
6 dismiss the appeal, asserting alternative grounds why a County
7 Superintendent lacked jurisdiction to hear this appeal. The
8 Trustees argued that the issue in dispute -- transfers to other
9 teaching positions within a district -- was a negotiated topic of
10 the CBA and the terms of that CBA also made the Trustees'
11 decision final and nonappealable. Alternatively, if transfers to
12 other teaching positions within a district were not a negotiated
13 topic covered by the CBA, the interest at issue was not protected
14 through a contested case.

15 Ms. Bland argued that teacher transfers within the District
16 were a District policy decision, not a negotiated topic covered
17 by the CBA. She also argued that all policy decisions of the
18 District are appealable to the County Superintendent.

19 After receiving briefs from both parties, the County
20 Superintendent issued an order dismissing the appeal on two
21 grounds. One, teacher assignment and transfer disputes are
22 governed by the CBA, which provides appeal to the Trustees as the
23 only remedy. Two, the interest in dispute -- transfers to other
24 teaching positions within a district -- is not a statutory or
25 constitutional right that is protected through the contested case

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process.

STANDARD OF REVIEW

The State Superintendent's review of a County Superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees. Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990) and Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

Granting a motion to dismiss is a conclusion of law. On appeal, the parties raised the issue of what is the appropriate standard of review for motions to dismiss. Ms. Bland argues that this appeal should be reviewed under the standard applicable to motions to dismiss for failure to state a claim -- all allegations are considered from the perspective most favorable to the Petitioner. The Trustees argue that because this is a motion to dismiss for lack of jurisdiction, not for failure to state a claim, there is no factual presumption in favor of the Petitioner because jurisdiction is not presumed.

The County Superintendent exercised her jurisdiction over CBA disputes by finding that the terms of this agreement precluded appeal. In other words, she dismissed for failure to

1 state a claim for relief under the terms of the CBA. She also
2 concluded that other than an interpretation of the terms of the
3 CBA, Ms. Bland had no other legal interest that was protected in
4 an administrative proceeding before a County Superintendent. In
5 other words, in the alternative she dismissed based on lack of
6 jurisdiction.

7 On review, this Superintendent has used the standard that
8 motions to dismiss are viewed with disfavor and are considered
9 from the perspective most favorable to the opposing party.
10 Buttrell v. McBride Land and Livestock, 170 Mont. 296, 553 P.2d
11 407 (1976).

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13 The county Superintendent correctly concluded that Ms.
14 Bland's appeal should be dismissed. The order is AFFIRMED.

15 MEMORANDUM OPINION

16 I. The CBA issue.

17 A. Jurisdiction. The motion to dismiss was based on two
18 separate legal arguments. One, terms of the CBA limited the
19 remedy available. Two, the interest at stake was not a
20 "controversy" or "contested case." Both arguments were labeled
21 jurisdiction.

22 Technically, the motion to dismiss based on the CBA was not
23 jurisdictional. County Superintendents have the jurisdiction to
24 interpret and apply the terms of a CBA. In Montana, the initial
25 appeal of the meaning of terms of a CBA between teachers and a

1 school may be to a County Superintendent of Schools. Canyon
2 Creek Education Association v. Yellowstone County School District
3 No. 4, 241 Mont. 73, 785 P.2d 201, 9 Ed. Law 4 (1990).

4 The issue was whether the appeal should be dismissed because
5 the terms of the CBA between LEA/MEA and the Trustees limited the
6 available remedy. A forum without jurisdiction could not make
7 findings and conclusions about the meaning of terms in the CBA,
8 which this county Superintendent correctly did. The County
9 Superintendent was not dismissing because of lack of
10 jurisdiction. She exercised her jurisdiction to determine the
11 CBA limited the remedy and that there was no appeal. County
12 Superintendents have the authority to do this. Althea Smith v.
13 Board of Trustees, Judith Basin County School District No. 12,
14 Cause No. CDV 92-1331, 12 Ed. Law 24 (1st J.D. 1993).

15 B. Merits. This Superintendent agrees with the County
16 Superintendent that teacher transfers, assignments and
17 reassignments were negotiated. Article 4, Section 1 and Article
18 5, Section 8 of the CBA unequivocally discuss these topics.
19 Article 4, Section 1, states:

20 District Rights. The Exclusive Representative shall
21 recognize the prerogative of the District to operate
22 and manage their affairs in all such areas, but not
23 limited to the following: directing employees, hiring,
24 promoting, transferring, assigning and retaining
25 employees; relieving employees from duties because of
lack of work or funds or under conditions where
continuation of such work be inefficient and non-
productive; maintaining the efficiency of government
operations; determining the methods, means, job
classifications, and personnel by which government

1 operations are to be conducted: taking whatever actions
2 may be necessary to carry out the missions of the
3 District in situations of emergency; and establishing
4 the methods and processes by which work is performed.
5 All matters not specifically and expressly covered or
6 treated by the language of the Agreement may be
7 administered by the Board in accordance with such
8 policy or procedure as the Board may determine.
9 Management rights will not be deemed to exclude other
10 management rights not herein specifically enumerated.

11 The question of transfers or assignments or reassignments
12 was specifically addressed. In the language of the CBA, Article
13 5, Section 8, states:

14 The Superintendent has the responsibility of assigning
15 or reassigning teachers to any building, room, grade or
16 subject for which they are qualified. The
17 Superintendent shall review all reasons for the
18 assignment or reassignment with those involved and
19 provide specific written reasons for the reassignment
20 upon request. To the extent possible, the
21 Superintendent will consider the concerns of the
22 teacher before a reassignment becomes final. Any
23 teacher reassigned against their wishes may appeal the
24 Superintendent's decision to the Board which will then
25 have the final non-appealable decision. Any teacher
whose teaching assignment is changed after the signing
of a contract, shall be consulted by July 30 or as soon
thereafter as possible about any change in teaching
assignment.

1 Like the County Superintendent] this Superintendent
2 disagrees with Ms. Bland that the CBA is silent about employee
3 preference. With Article 4, Section 1, the LEA/MEA and the
4 Trustees agreed that decisions about hiring, promoting,
5 transferring and assigning are the prerogative of the District.
6 With Article 5, Section 8, the LEA/MEA and the Trustees agreed
7 about how the District would exercise that prerogative -- the
8 Superintendent would give his or her reasons for assignment if

1 asked and would "consider the concerns of the teacher." Both
2 parties agreed that the teacher could appeal to the Trustees but
3 they also agreed that would be the only appeal.

4 Article 4, Section 1's statement that the District has the
5 prerogative to transfer and assign, also means the District has
6 the prerogative not to transfer and not to assign. Ms. Bland's
7 argument that the CBA addressed teacher dissatisfaction with
8 reassignments but did not address dissatisfaction with
9 assignments requires a premise that the English language is
10 remarkably inflexible; this Superintendent does not agree with
11 that premise.

12 Giving the language of the CBA its plain meaning, it is
13 clear that the Trustees and the LEA/MEA negotiated what procedure
14 would be followed when a LEA/MEA member was unhappy with the
15 District Superintendent's decision about assignment of teaching
16 positions. The agreed procedure was one appeal -- to the
17 Trustees. The County Superintendent correctly applied the terms
18 of the CBA and declined to hear the matter.

19 11. The Contested Case Issue.

20 Because the County Superintendent correctly concluded that
21 this dispute was governed by the CBA and the terms of the CBA
22 precluded the appeal, there was no need for her to reach the
23 second grounds for dismissal. Dismissing an appeal once is
24 enough. The Superintendent, however, apparently ruled on the
25 second grounds to save the parties unnecessary work if the

1 dismissal were overturned. This Superintendent will briefly do
2 the same.

3 The County Superintendent was correct that the issue of
4 teacher transfers is not a contested case. Ms. Bland is wrong
5 that all District policy decisions are appealable to the County
6 Superintendent. To be appealable to the County Superintendent
7 the policy decision at issue must be governed by a statute that
8 grants an administrative hearing or an interest constitutionally
9 protected by due process must be at stake.

10 Disputes over teaching position transfers are not disputes
11 that the Legislature has seen fit to statutorily provide
12 contested case procedures to resolve. When the Legislature
13 intends to provide contested case proceedings it enacts a statute
14 stating that there is a right to a hearing. (See, for example, §§
15 20-10-132(2) or 20-4-207(5), MCA). **Nor** are position transfers
16 within a district a liberty or property interest that, when
17 threatened by government action, entitles a person to due process
18 under the Fourteenth Amendment of the U.S. Constitution or
19 Article 11, Section 17 of the Montana Constitution.

20 Position transfers are one of the infinite number of
21 significant or trivial topics upon which reasonable minds may
22 differ. Every disagreement that occurs in a school setting does
23 not give the disagreeing parties a statutory or constitutional
24 right to a contested case in an administrative forum.
25 Unquestionably, the resolution of any foreseeable disagreement

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1 can be addressed, as it was in this case, in a CBA. If a CBA or
2 a statute or Constitutional Due Process does not provide for
3 appeal to the county Superintendent, however, the dispute is not
4 a "contested case" as defined in § 2-4-102(4)¹ or a "matter of
5 controversy" as that term is used in § 20-3-107, MCA. Irvina v.
6 Board of Education, Valley County School District No. 1, 248
7 Mont. 460, 813 P.2d 417, at 420, 10 Ed. Law 177, at 179 (1991).

8 Simply because a disagreement occurs in a school does not
9 mean the school district, the county or the state must provide a
10 contested case hearing to resolve it. Just as there must be a
11 cause of action in District Court, there must be a constitutional
12 interest at stake or a statutory right to a hearing before the
13 dispute rises to the level of contested case.

14 A word of clarification about contested case hearings on CBA
15 disputes may end some confusion about when a statutory right to
16 a hearing exists. CBA disputes are not heard by County
17 Superintendents under a grant of general jurisdiction over all
18 matters of law related to schools or because of a common law
19 "right to hearing" under § 20-3-107, MCA. Hearings over CBA
20 disputes, like all state administrative hearings, arise out of a
21 state statute that provide for an administrative hearing. state
22 law provides for administrative process when a public employer
23 has negotiated a CBA. (MCA Title 39, chapter 31). The Montana

24 ¹ The County Superintendent inadvertently cited this statute
25 : § 20-4-102(4), not § 2-4-102(4), MCA.

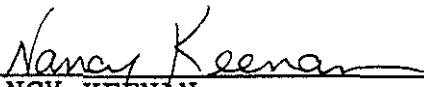
1 Supreme Court has held that the County Superintendents of Schools
2 are an appropriate administrative forum for these contested
3 cases. Although some might argue that the appropriate forum is
4 the Board of Personnel Appeals, federal and state law provide for
5 an administrative hearing, and in Montana that hearing can be
6 before a County Superintendent.

7 Sections 20-3-107 and 20-3-210, MCA, are procedural, not
8 jurisdictional, statutes. As stated in Althea Smith v. Board of
9 Trustees, Judith Basin County School District No. 12, 11 Ed. Law
10 65 (OSPI 1992), (affirmed on other grounds in Smith, Cause No.
11 CDV 92-1331, supra):

12 Unless a claimant has a case in controversy (contested
13 case), the administrative process is not invoked and
14 the county superintendent is without jurisdiction to
15 hear the complaint and the complaint must be dismissed.
16 To find that § 20-3-210, MCA, confers unlimited
17 jurisdiction on a county superintendent leads to absurd
18 results. I cannot believe that the legislature
19 intended to subject every decision of a board of
20 trustees to judicial review. If the county
21 superintendent must hear an appeal on every decision of
22 a board of trustees, this would be the result.

23 This remains the position of this Superintendent on the
24 extent of the jurisdiction of State and County Superintendents of
25 Schools and will be consistently applied by the Office of Public
Instruction.

DATED this 9th day of June, 1993.


NANCY KEENAN

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 9th day of June, 1993, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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